

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

FERRIS VALENTINE,  Movant,  vs.  UNITED STATES OF AMERICA,  Respondent.	4:23-CV-04133-KES  ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
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Movant, Ferris Valentine, moved to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255. Docket 1. This court granted respondent's motion to dismiss Valentine's § 2255 motion with prejudice and entered judgment in favor of respondent. Docket 69 at 25; Docket 70 at 1. The court denied a certificate of appealability. Docket 69 at 26. Valentine filed a notice of appeal (Docket 71), a motion for leave to proceed in forma pauperis on appeal (Docket 72), and a copy of his prisoner trust account report (Docket 73).

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the Prison Litigation Reform Act do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3). Federal Rule of Appellate Procedure 24(a)(3) also provides that

“[a] party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization” unless the district court certifies that the appeal is not taken in good faith. Fed. R. App. P. 24(a)(3).

Valentine’s appeal appears to be taken in good faith. In his underlying criminal proceeding, *United States v. Valentine*, 4:19-CR-40067-KES (D.S.D.), Valentine was determined to be financially unable to obtain an adequate defense. Valentine’s application to proceed in forma pauperis on appeal and his prisoner trust account report also demonstrate his inability to pay the \$605.00 appellate filing fee. *See* Dockets 72, 73. Thus, Valentine is granted leave to proceed in forma pauperis on appeal.

It is ORDERED that Valentine’s motion for leave to proceed in forma pauperis on appeal, Docket 72, is granted.

DATED May 13, 2025.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER  
UNITED STATES DISTRICT JUDGE